

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 27 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2011-0073 |
| |) | DEPARTMENT B |
| Appellee, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| RICARDO MARTINEZ, |) | the Supreme Court |
| |) | |
| Appellant. |) | |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20080362

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Law Office of Vanessa C. Moss
By Vanessa C. Moss

Tucson
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, appellant Ricardo Martinez was convicted of aggravated driving under the influence of an intoxicant and driving with an alcohol concentration (AC) of .08 or greater (DUI offenses), both while his license was suspended, canceled, revoked, refused or restricted. He was convicted of two additional counts of aggravated DUI based on the jury's finding that he had committed two or more DUI offenses within

the eighty-four months preceding the offense charged. The trial court found he had two historical prior felony convictions and sentenced him to enhanced, presumptive, ten-year terms of imprisonment, to be served concurrently.¹

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), avowing she has “diligently searched the record and has found no arguable issue of law which could be presented in good faith for appeal.” She asks this court to review the record for reversible error. Martinez has not filed a supplemental brief.

¶3 We conclude substantial evidence supported findings of all the elements necessary for Martinez’s convictions. *See* A.R.S. §§ 28-1381(A)(1), (2), 28-1383(A)(1), (2). In sum, in June 2007, Arizona Department of Public Safety Officer Arnold Escoboza initiated a traffic stop after he observed Martinez driving on Interstate 10 within one vehicle length of the vehicle in front of him and weaving back and forth within his lane. During his investigation, Escoboza detected the odor of alcohol coming from Martinez’s truck, and Martinez had red, watery eyes, spoke with slurred speech, appeared unbalanced as he got out of his vehicle, and exhibited multiple cues for intoxication during field sobriety tests. Further evidence established Martinez had an AC of .122

¹Although Martinez absconded before the jury rendered its verdicts, and his absence delayed his sentencing for more than ninety days, nothing in the record suggests he was warned that, pursuant to A.R.S. § 13-4033(C), his voluntary absence would result in waiver of his right to appeal. *See State v. Bolding*, 227 Ariz. 82, ¶ 20, 253 P.3d 279, 285 (App. 2011) (construing § 13-4033(C); defendant’s voluntary delay of sentencing may not be regarded as knowing, voluntary, and intelligent waiver of constitutional right to appeal unless defendant warned of such consequence). Accordingly, we conclude we have jurisdiction over this appeal. *See id.*

within two hours of driving, his license had been suspended and revoked on the date of this offense, and he previously had been convicted of two separate DUI offenses committed in 2003 and 2004. Martinez’s sentences are within the range authorized and were imposed in a lawful manner. *See* A.R.S. §§ 13-105(22)(a)(iv), 13-703(C), (J).²

¶4 In our examination of the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we affirm Martinez’s convictions and sentences.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

²The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 15, 28, 120. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119, we refer in this decision to the current section numbers rather than those in effect at the time of the offense in this case. *See* 2007 Ariz. Sess. Laws, ch. 248, § 1 (former A.R.S. § 13-604(C)).